

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2014-153-S - ORDER NO. 2014-452

JUNE 26, 2014

IN RE: Arch Enterprises, LLC d/b/a McDonalds,	)	ORDER DENYING
Complainant/Petitioner v. Palmetto	)	PETITION FOR
Wastewater Reclamation, LLC d/b/a Alpine	)	REHEARING AND
Utilities, Defendant/Respondent	)	RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition for Rehearing and Reconsideration filed by Arch Enterprises, LLC d/b/a McDonalds (“Arch”) in this complaint matter against Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities (“Alpine”). The Petition is denied.

First, Arch complains that it received no notice that anything related to its complaint would be heard and decided by the Commission on May 1, 2014, or that dispositive action could result at the Commission’s scheduled public business meeting on that date. Significantly, Arch does not claim that it failed to receive notice of the meeting; nor does it claim that the Commission failed to list Arch’s docket on the meeting’s agenda. Instead, Arch finds fault with the sufficiency of the notice. Arch’s Petition quotes the specific language of the Agenda Item, which stated: “Discuss with the Commission the Motion to Dismiss on an expedited basis filed on behalf of Palmetto Wastewater Reclamation, d/b/a Alpine Utilities.” However, it does not quote the statement at the beginning of the full agenda, where the following introductory language appears: “Commission Action on the Following Items:”. In our view, the language of the

agenda item itself was sufficient notice to Arch that a dispositive motion was up for consideration. Moreover, the agenda item language and the introductory “Commission Action” language taken together provided clear notice that the Motion to Dismiss would be discussed by the Commission, and that the Commission could act on the motion at the time of the meeting.

Further, the written Motion and accompanying materials all plainly state Alpine’s request that the Commission expedite review of the Motion. Moreover, the Motion specifically requests “that the Commission rule on this motion...without hearing or oral argument” and that the “Motion be considered on an expedited basis without oral argument so that PWR (Alpine) may have the opportunity to be promptly relieved from the requirement” that it refrain from disconnection of Petitioner’s premises. See Motion at 2, 9-10. The lack of notice allegation is clearly without merit.

Arch also states that the Commission’s ruling dismissing the Complaint was issued without any opportunity for the Complainant to be heard on the matter in advance of the ruling. This allegation is also without merit. Again, the Motion to Dismiss filed by Alpine specifically requested that the “Motion be considered on an expedited basis without oral argument ....” Commission Regulation 103-829 (A) specifically states that responses to written motions are due within 10 days after service of such motions. Arch did not meet this deadline, and failed to file a response to the Motion to Dismiss. Accordingly, it did not avail itself of its right to respond to the Motion, so it cannot now legitimately complain that it did not have an opportunity to be heard on the matter.

Further, since Arch failed to file a response to the Motion, the Motion to Dismiss the Complaint in this matter was unopposed, based on the Commission's record.

In addition, as Arch states in its present Petition, Regulation 103-829 (B) gives the Commission the discretion to hear oral argument and response on prefiled motions in advance of the hearing on the merits of the case, or at the merits hearing. Because the Company's Motion to Dismiss was unopposed, based upon a review of the record, the question of holding oral arguments was moot, either in advance of the hearing or at the time of a scheduled hearing on the merits. Further, under Commission Regulation 103-803, waiver of the provisions allowing oral arguments was appropriate due to the non-contested nature of the Motion to Dismiss, and, under the circumstances of this case, was not contrary to the public interest. This Commission may dismiss complaints without hearing when the complainant fails to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. This Commission may waive the provisions allowing oral arguments in granting the Company's request for dismissal, which it did in this instance. It is not contrary to the public interest to forego oral argument or hearing when relief cannot be granted in any event based on the face of the Petitioner's pleadings. This procedure is consistent with that used by other State tribunals.

Arch also alleges that the Commission erred in concluding that its request for a reduction in previously charged rates would amount to prohibited retroactive rate making. Alpine cites Commission Regulation 103-533, which states that a utility must charge its customers according to schedules filed in compliance with Title 58 of the South Carolina

Code of Laws, which requires approval of such schedules by the Commission. The Regulation clearly states that the utility is prohibited from charging a customer in any manner inconsistent with its filed schedules, and prescribes remedies in the event that charges outside these schedules are billed to the utility's customers. In this case, Arch requests the imposition of rates approved only for another utility company, and in a retroactive manner. Alpine's approved rates are its own; it does not offer the rates sought by Arch. Further, the case law in South Carolina prohibits a retroactive reduction of charges imposed under a previously approved rate. See South Carolina Elec. and Gas Co. v. Public Service Commission, 275 S.C. 487, 272 S.E.2d 793 (1980).

Essentially, we dismissed the complaint because it failed to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. This was because the complaint requested rates that either had only been approved for another wastewater utility or rates that, if put into effect, would constitute retroactive ratemaking. The relief sought by the Complainant was unavailable as a matter of law. Dismissal was therefore reasonable. Oral argument could not have affected this outcome.

In conclusion, our dismissal of the Arch Complaint was proper and consistent with the law, and was based on settled regulatory principles. Further, since the complaint was properly dismissed, the scheduled hearing was properly cancelled by the Standing Hearing Officer's Directive of May 6, 2014.

Accordingly, Arch's Petition for Rehearing and Reconsideration is denied.

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This Order shall remain in full force and effect until further order of the Commission.

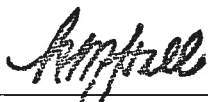
BY ORDER OF THE COMMISSION:



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G. O'Neal Hamilton, Chairman

ATTEST:



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Nikiya Hall, Vice Chairman

(SEAL)